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Recovery of Stolen Paper Money Under the Louisiana Civil Code and the Negotiable Instruments Law

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the same forums and under the same substantive law. The *Westinghouse* case prevents that and in this respect is in conflict with the national policy of uniformity in the regulation of labor relations. It has been suggested that this case will be overruled if the issue is presented again.[33] This position would seem to be supported somewhat by the result in the *Enterprise* case; for it would seem that the union's interest would be satisfied if the employer is compelled to arbitrate and that the enforcement of the award would fall more nearly into the category of uniquely personal rights. Consequently, the Court's allowing the union to enforce the arbitrator's award would seem to suggest that a retreat from *Westinghouse* is occurring, although there was no discussion of this in the *Enterprise* case and although the *Westinghouse* case was not overruled.

It is submitted that the most expeditious remedy would be a legislative overruling of *Westinghouse* by amending Section 301 so that any right which arises from a collective bargaining contract may be enforced in the federal courts. Such a course would eliminate the anomaly that exists today because of the *Westinghouse* decision and would result in all rights in a collective bargaining contract being governed by the same substantive law.

Peyton Moore

Recovery of Stolen Paper Money Under the Louisiana Civil Code and the Negotiable Instruments Law

Article 2138[1] of the Louisiana Civil Code provides that if a debtor give a thing in payment of his obligation, which he has no right to deliver, his obligation is not discharged and the owner may recover his goods, unless the obligation has been discharged by the payment of money or things which are consumed in use, and the creditor has used them; in which case

33. Isaacson, *The Implications of the Recent Supreme Court Decisions on Labor Arbitration*, 13 RECORD OF N.Y.C.B.A. 67 (1958).

1. LA. CIVIL CODE art. 2138 (1870): "If the debtor give a thing in payment of his obligation, which he has no right to deliver, it does not discharge his obligation, and the owner of the thing given may reclaim it in the hands of the creditor, unless the obligation has been discharged by the payment of money, or the delivery of some of those things which are consumed in the use, and the creditor has used them; in which cases neither the money nor the things consumed can be reclaimed, and the payment will be good."

neither can be reclaimed and the payment is good. Article 2139[2] provides that the owner of money or other stolen property, which has been given in payment, may recover the stolen article and the payment by the thief is not good.

In a recent case a Louisiana court of appeal declared that when stolen money is given by the thief in payment of a pre-existing debt the owner may recover the amount paid to the creditor.[3] In so holding, the court declared that Article 2138 applies generally to money or things given in payment which the debtor has no right to deliver, and that Article 2139 qualifies and is not in conflict therewith, applying specifically to cases involving *stolen money.* Furthermore, the court declared that the adoption of the Negotiable Instruments Law did not repeal Article 2139 since money is not signed by the maker and therefore is not a negotiable instrument. On rehearing, the court reaffirmed its original interpretation of the Civil Code articles and, on the NIL point, stated that currency and silver certificates do not "come within the purview of the Negotiable Instruments Law, possibly not for the reasons stated in our original opinion but for the reason that such are not commercial paper which this law is designed to cover."[4]

The purpose of this Comment is three-fold: first, to compare similar problems and their solutions in other systems of law; second, to examine the Louisiana jurisprudence and pertinent Civil Code articles; and third, to examine briefly the relation of the NIL to the problem of stolen paper money used to pay a pre-existing debt.

For the purpose of this Comment, currency is defined as encompassing all forms of legal tender. It includes both paper money as well as metallic money or coin. Paper money refers to silver certificates and Federal Reserve notes commonly referred to as "greenbacks."[5]

THE COMMON LAW

Bona Fide Purchaser of Goods

The general rule at common law is that a third party who

2. *Id.* art. 2139: "If money, or other stolen property, be given in payment, the payment is not good, and the owner may recover the amount paid."

3. Crawford v. Alatex Construction Service, Inc., 120 So.2d 845 (La. App. 1960).

4. *Id.* at 853.

5. For different forms of legal tender, see 31 U.S.C.A. §§ 452-463 (1954).

purchases goods from a vendor having legal or equitable title will prevail over the original owner of the goods, provided the third purchaser has given value for the goods and is in good faith.[6] The vendor is counted as having a legal or equitable title even though he has obtained a movable through fraud[7] or vice of consent.[8] In this case, he has a voidable title which, upon transfer to the bona fide purchaser, becomes good.

However, when the bona fide purchaser obtains the article from a person who possesses no title or is without authority to sell, the original owner can recover the goods.[9] The vendor will have no title and no authority to sell in the following situations: (1) sale by a bailee or custodian;[10] (2) sale by a finder;[11] and (3) sale by one who has obtained the goods tortiously or feloniously.[12]

In the situation where a third party purchases goods from a vendor having legal or equitable title, the requirement that the purchase have been for *value* in order for the bona fide purchaser to prevail over the original owner has presented some difficulty.[13] Thus, where the third party purchaser takes goods in *payment of an antecedent debt,* opinion is somewhat divided as to whether the value requirement has been met. Originally,

6. Snyder v. Lincoln, 153 Neb. 611, 45 N.W.2d 749 (1951); Kibler v. Yakima Finance Corp., 144 Wash. 604, 258 Pac. 490 (1927); Barthelmess v. Cavalier, 2 Cal. App.2d 477, 38 P.2d 484 (1934); Franklin, *Security of Acquisition and of Transaction: La Possession Vaut Titre and Bona Fide Purchase,* 6 TUL. L. REV. 589, 594 (1932); 77 C.J.S. *Sales* §§ 288, 293-294 (1952); 92 C.J.S. *Vendor & Purchaser* § 320 (1955).

7. Baehr v. Clark, 83 Iowa 313, 49 N.W. 840 (1891). At common law, in determining whether one who obtains a movable by fraud receives a voidable title or rather receives no title at all, a distinction is drawn in transactions which are *inter presentes* and those which are *inter absentes.* In the former the defrauder obtains voidable title, whereas in the latter he obtains no title. 3 CORBIN, CONTRACTS § 602 (1951).

8. Richmond v. Mississippi Mills, 52 Ark. 30, 11 S.W. 960 (1889); Callendar Savings Bank v. Loos, 142 Iowa 1, 120 N.W. 317 (1909); Cardone v. Consolidated Edison Co., 89 N.Y.S.2d 845 (Mun. Ct. 1949).

9. Simpson v. Shaw, 51 Ariz. 293, 226 P.2d 557 (1951); Yates v. Russell, 20 Ariz. 338, 180 Pac. 910 (1919); Voss v. Chamberlain, 139 Iowa 569, 117 N.W. 269 (1908); Blue Grass Taxi Garage Co. v. Shepherd, 304 Ky. 390, 200 S.W.2d 936 (1941); Plummer v. Kingsley, 190 Ore. 378, 226 P.2d 297 (1951); Notes, 25 TUL. L. REV. 146 (1950), 23 TUL. L. REV. 420 (1949); 77 C.J.S. *Sales* § 295 (1955).

10. Goddard Grocer Co. v. Freedman, 127 S.W.2d 759 (Mo. App. 1939); General Motors Acceptance Corp. v. Baker, 291 N.Y.S. 1015, 161 Misc. 238 (1936).

11. Stultz v. Miltenberger, 176 Ind. 561, 96 N.E. 581 (1911); 77 C.J.S. *Sales* § 295(d) (1955).

12. Goddard Grocer Co. v. Freedman, 127 S.W.2d 759 (Mo. App. 1939); Effron v. Haile, 103 N.Y.S.2d 561 (1951).

13. See VOLD, LAW OF SALES 403 (1959); 55 AM. JUR. *Vendor & Purchaser* § 742 (1941); 77 C.J.S. *Sales* § 290 (1955).

the overwhelming majority at common law denied protection to the third party against the original owner, refusing to count the cancellation of a pre-existing debt as a giving of value.[14] This position was supported upon the reasoning that by allowing the owner to reclaim his goods and by reinstating the creditor's claim against the debtor, the parties would be restored to their original positions. It would seem, however, that such a conclusion is not always justifiable, since often the creditor cannot be restored to his original position. In many cases the creditor might have lost an opportunity to collect, the debtor may have concealed his assets, or the creditor may have cancelled a lien or mortgage against the debtor's property.[15] Since the enactment of the NIL and the Uniform Sales Act, which do consider a pre-existing debt as value,[16] there has been greater movement in the direction of affording protection to the creditor who receives goods in satisfaction of a pre-existing debt. Although it is still a minority view, some courts have considered the creditor in this situation as a bona fide purchaser for value.[17]

Bona Fide Acquirer of Currency

Where a bona fide third party acquires currency, or negotiable instruments from one who has no title, the common law reaches a result diametrically opposed to that reached in the case of chattels acquired by a third party. Although the acquirer of chattels is not protected against the original owner in such a situation,[18] the acquirer of currency or negotiable instruments is.[19] This protection, however, is limited to those cases where the currency passes *as currency*[20] as opposed to the sale of rare

14. See note 12 *supra*.

15. In cases in which the creditor has changed his position to his detriment, so that he cannot be restored to his original position, more of the common law jurisdictions, although still in the minority, have tended to consider him as being a bona fide purchaser for value and afforded protection, distinguishing those cases in which he has not changed position. E.g., McCleery v. Wakefield, 76 Iowa 529, 41 N.W. 210 (1889); Farmers & M. State Bank v. Higgins, 149 Kan. 783, 89 P.2d 916 (1939); Grand Rapids National Bank v. Ford, 143 Mich. 402, 107 N.W. 76 (1906).

16. UNIFORM NEGOTIABLE INSTRUMENTS LAW § 25; UNIFORM SALES ACT § 76.

17. Hallett v. Alexander, 50 Colo. 37, 114 Pac. 490 (1911); Sutton v. Ford, 144 Ga. 587, 87 S.E. 799 (1916); Rasmussen v. O. E. Lee & Co., 104 Mont. 278, 66 P.2d 119 (1937). See VOLD, LAW OF SALES 403 (1959).

18. See note 8 *supra*.

19. People's National Bank v. Jones, 249 Ky. 468, 61 S.W.2d 17 (1933); Salley v. Terrill, 95 Me. 553, 50 Atl. 896 (1901); Miller v. Race, 1 Burr. 452 (1758). See BRITTON, BILLS AND NOTES 339-43 (1943); 77 C.J.S. *Sales* § 292 (1955); 8 AM. JUR. *Bills & Notes* § 619 (1937).

20. In the early English case of Miller v. Race, 1 Burr. 452, 457 (1758), the

coins as collector's items.[21] It is from this English jurisprudence relative to coin and bank notes that the law merchant and, subsequently, the Negotiable Instrument Law was derived.

Summary

The common law rules relative to a bona fide purchaser may be summarized thusly: (1) a bona fide purchaser of goods from one who has legal or equitable title is protected against the original owner if he gives value, but a majority of the common law still holds that an antecedent debt does not constitute value; (2) a bona fide purchaser of goods from one who has no title cannot prevail against the owner; and (3) a bona fide purchaser of currency, passing as currency, is successful against the owner whether his vendor had title or not.

THE FRENCH LAW

Generally: Goods or Money

The civilian counterpart of the bona fide purchaser doctrine is the doctrine of *la possession vaut titre* which protects one dealing with the possessor of corporeal movables.[22] The doctrine as stated in the French Civil Code means in effect that in the case of movables, possession is equivalent to title.[23] *La possession vaut titre* was created to protect third parties who had received a movable from one to whom it had been confided.[24]

court stated: "It has been quaintly said, 'that the reason why money cannot be followed is, because it has no earmark:' but this is not true. The true reason is, upon account of the currency of it: it cannot be recovered after it has passed in currency. So, in case of money stolen, the true owner cannot recover it, after it has been paid away fairly and honestly upon a valuable bona fide consideration."

21. United States v. Barnard, 72 F. Supp. 531 (W. D. Tenn. 1947); Chapman v. Cole, 12 Gray 141, 171 Am. Dec. 739 (1858); Moss v. Hancock, 2 Q.B. 111 (1899).

22. 1 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2476 (1959); Franklin, *Security of Acquisition and of Transaction: La Possession Vaut Titre and Bona Fide Purchase*, 6 TUL. L. REV. 589, 595, 598 (1932); Note, 23 TUL. L. REV. 420, 422 (1949).

23. FRENCH CIVIL CODE art. 2279 (Wright's transl. 1906): "With reference to movables, possession is considered equivalent to a title. But a person who has lost or who has been robbed of something can bring an action to recover it against any person he finds in possession thereof within three years of the date of the loss or robbery, and the latter has his right of action over against the person from whom he received it."

24. See 1 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2476 (1959).

Unlike the common law doctrine of bona fide purchaser, this theory, in general, protects the good faith acquirer of a chattel rather than the original owner.[25] In setting forth the distinction between the bona fide purchaser doctrine of common law and the doctrine of *la possession vaut titre*, it has been said that the common law doctrine terminates only technical equities in the original owner, while the doctrine of *la possession vaut titre* terminates any interest, except that of an owner of goods which were lost or stolen.[26]

Lost or Stolen Goods

Article 2279 of the French Civil Code setting forth the doctrine of *la possession vaut titre* excepts from its operation goods which have been lost or stolen. Consequently, the owner of such goods may prevail over the third party who has acquired them.[27] In the case of lost or stolen goods, the French provide that the action for the revendication of the property must be brought against an innocent party within three years from the date upon which the goods were lost or stolen.[28] If, however, the goods remain in the possession of the thief or finder, the owner has thirty years in which to bring the action.[29] A modification of this rule occurs where the action is brought to recover lost or stolen goods from one who bought them at a fair, market, or public sale or from a merchant ordinarily dealing in such articles. In such cases, the French Code provides that the owner cannot demand the return of the goods except on reimbursing the third party the price he paid for the goods.[30]

25. See Franklin, *Security of Acquisition and of Transaction: La Possession Vaut Titre and Bona Fide Purchase*, 6 TUL. L. REV. 589, 601 (1932).

26. See 1 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2482 (1959); Franklin, *Security of Acquisition and of Transaction: La Possession Vaut Titre and Bona Fide Purchase*, 6 TUL. L.REV. 589, 601 (1932).

27. See note 25 *supra*.

28. It would seem that the French allow the vendee to be reimbursed to the extent of the purchase price paid without the necessity of possessing the goods for any specific period. The vendee would be entitled to reimbursement immediately without the requirement of possessing for three years as in Louisiana. See 1 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) nos. 2483-2486 (1959).

29. *Id.* nos. 2483, 2484.

30. FRENCH CIVIL CODE art. 2280 (Wright's transl. 1908): "If the person in actual possession of the thing stolen or lost bought it at a fair or market or at a public sale, or from a merchant selling similiar articles, then the original owner cannot demand possession thereof except on condition of paying the person in possession the price he paid for it. A lessor who seeks to recover under Art. 2102 movables taken away without his consent, and which were bought under the circumstances mentioned above, must also repay the buyer the price he paid."

Stolen Currency

The French commentators seem to be somewhat in conflict in resolving the problem raised by an acquirer in good faith of stolen currency. Pothier states that where a payment is made in currency, by a person who is not the owner, the true owner may not recover the currency and the payment is valid if the money has been "consumed" by the creditor.[31] Pothier contends that it is the consumption which puts the money out of the creditor's possession, that marks the time at which the owner may no longer reclaim the stolen money.[32] Planiol considers in more detail the specific problems presented by movables which have been lost or stolen[33] and concludes that the French, like the common law, never allowed the revendication for the recovery of coin.[34] This protection is also afforded the third party possessor of bank notes and currency.[35]

THE LOUISIANA CIVIL CODE

Louisiana has expressly rejected the French theory of *la possession vaut titre* in favor of the bona fide purchaser doctrine.[36] Consequently, the acquirer of goods from one who has no title is not protected in Louisiana to the extent that he is in France. It has been suggested that the reason for this choice lies in the fact that during the development of the law in this area, Louisiana was primarily an agrarian society. In such a society, the need for security of one's ownership in goods was considered paramount. On the contrary, the French society was more advanced and the need for security of transactions in movables, without the danger of possible nullification by pre-existing equities, was paramount.[37]

31. 1 POTHIER, A TREATISE ON THE LAW OF OBLIGATIONS OR CONTRACTS, no. 461 (Evans transl. 1853).

32. *Ibid.*

33. See 1 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) nos. 2492-2494 (1959); 2 *id.* no. 406.

34. See 1 *id.* nos. 2488-2492; Franklin, *Security of Acquisition and of Transaction: La Possession Vaut Titre and Bona Fide Purchase*, 6 TUL. L. REV. 589, 598 (1932).

35. See 1 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 2492 (1959); 2 *id.* nos. 401-406.

36. Holton v. Hubbard, 49 La. Ann. 715, 22 So. 338 (1897); Holloway v. Ingersoll Co., 133 So. 819 (La. App. 1931).

37. See Franklin, *Security of Acquisition and of Transaction: La Possession Vaut Titre and Bona Fide Purchase*, 6 TUL. L. REV. 589, 601 (1932).

Chattels in Payment of Antecedent Debt

Civil Code Article 2138 provides that where a debtor gives a thing, which he has no right to deliver, in payment of his obligation, the owner may recover the goods from the creditor unless the thing has been used or consumed. Presumably the language of the article "which he has no right to deliver" is broad enough to include the debtor who possesses by virtue of either a void or voidable title.[38] However, in regard to chattels obtained from a possessor who holds under a voidable title, Louisiana courts have adopted the solution of the common law and afforded protection to the purchaser in good faith and for value.[39] Although it might be argued that the draftsmen of the Code intended the three-year prescription to be the sole measure of protection to be afforded to the good faith purchaser,[40] it is clear that the common law solution has been adopted.

Stolen Chattels or Currency Given in Payment of Antecedent Debt

Although Article 2138 sets forth the general rule applicable to goods transferred in satisfaction of an obligation by the debtor who held under either a void or voidable title, this article must be construed with Article 2139, which limits the application of Article 2138 in the area of *stolen* currency or goods given in payment. Article 2139 provides that the owner of stolen currency or goods may recover them from the creditor who has received them in payment of an obligation. As to *goods* which are held by one who has no title (lost or stolen goods) and which have passed into the hands of a good faith acquirer, the Civil Code in Article 3509 provides that all movables may be acquired by the prescription of ten years.[41] Although an owner

38. The Code article, in using the language "that which he has no right to deliver" presumably includes all degrees of stealing as contemplated by the common law. In the case of larceny and embezzlement, the thief gets no title, but in the case of false pretenses the thief is generally held to have voidable title. This distinction has been followed in Louisiana. Packard Florida Motors Co. v. Malone, 208 La. 1058, 24 So.2d 75 (1945) (larceny); Security Sales Co. v. Blackwell, 167 La. 667, 120 So. 45 (1929) (embezzlement); Lynn v. Lafitte, 177 So. 83 (La. App. 1937) (larceny).

39. Thomas v. Mead, 8 Mart.(N.S.) 341 (La. 1829); Note, 17 LOUISIANA LAW REVIEW 854 (1957).

40. LA. CIVIL CODE art. 3506 (1870) provides that if a person has possessed a movable in good faith and by a just title, for a period of three years, he acquires the ownership of the movable unless it was a thing which was lost or stolen.

41. *Id.* art. 3509: "When the possessor or any movable whatever has possessed it for ten years without interruption, he shall acquire the ownership of it without being obliged to produce a title or to prove that he did not act in bad faith." See Note, 17 LOUISIANA LAW REVIEW 854 (1957).

may recover lost or stolen goods prior to the expiration of the prescriptive period of ten years, the jurisprudence has interpreted Civil Code Articles 3506 and 3507[42] to mean that where the purchaser has acquired the stolen goods at public auction or from one in the habit of selling such things, he is entitled to a restitution of the price if he has possessed the goods for a period of three years.[43]

Since the French Civil Code contains no article which corresponds to Article 2139, the French authorities are of no aid in interpretation. A possible explanation of the presence of this article may be found in the fact that, at the time of its enactment, the common law was overwhelmingly to the effect that a pre-existing debt was not sufficient to constitute a giving of value as required by the bona fide purchaser doctrine,[44] and therefore allowed the owner to recover his goods. The refusal to protect the creditor, who had received stolen currency, under Article 2139 possibly reflects the common law thinking at this time. It is to be noted, however, that the trend of the statutory law today seems to be toward holding such to constitute value.[45]

It appears that only twice have the Louisiana appellate courts faced the question of recovery of stolen paper money transferred by one having no title.[46] However, in neither case was the paper

42. LA. CIVIL CODE art. 3507 (1870): "If however, the possessor of a thing stolen or lost bought it at a public auction or from a person in the habit of selling such things, the owner of the thing can not obtain restitution of it, without returning to the purchaser the price it cost him."

43. Security Sales Co. v. Blackwell, 167 La. 667, 120 So. 45 (1929); Campbell v. Nichols, 11 Rob. 16 (La. 1845); Davis v. Hampton, 4 Mart. (N.S.) 288 (La. 1826).

44. See VOLD, LAW OF SALES 403 (1959); 55 AM. JUR. *Vendor & Purchaser* § 742 (1941); 77 C.J.S. *Sales* § 290 (1955).

45. UNIFORM SALES ACT § 76; UNIFORM COMMERCIAL CODE § 1-201(44); 46 AM. JR. *Sales* § 467 (1941); 77 C.J.S. *Sales* § 290 (1955).

46. In the case of First National Bank of Birmingham, Ala. v. Gibert & Clay, 123 La. 845, 49 So. 593 (1909), the court denied recovery of paper money used by a bank teller in speculating on the stock market. The court quoted language of an Illinois case which was almost identical to the instant case and followed the established doctrine of the common law relative to stolen paper money in denying recovery. The case of Steamboat Carrie Converse & Owners v. Jacob Feitig, 27 La. Ann. 117 (1875), which was tried prior to the enactment of the NIL in Louisiana, also denied recovery. In this case the plaintiff sought to recover paper money in the possession of a gambler. The gambler had acquired possession of the paper money from the plaintiff's employee who had embezzled it from the plaintiff. The Court stated that this was not a case in which the plaintiff was seeking to recover a specific piece of property which was in possession of defendant and dismissed the petition as showing no cause of action. By the court's language, it would seem that it was applying the bona fide purchaser doctrine and that had the plaintiff been suing for the recovery of *property* he would have been successful, for under the bona fide purchaser doctrine an embezzler obtains no title and can pass none. However, in the case of *stolen paper money* (which includes embezzlement and larceny) the common law denied recovery.

money used to pay a pre-existing debt as contemplated in Article 2139. Thus, it appears that Article 2139 has played no part in prior reported decisions and was not urged or considered in the two cases which might possibly have presented an opportunity for its consideration.

PAPER MONEY AS A NEGOTIABLE INSTRUMENT AT COMMON LAW

In order to determine whether money is a negotiable instrument within the purview of the NIL, a consideration of the history and purpose of the NIL is necessary. At an early date in England metallic coin passed from hand to hand free of prior equities because of its own special nature.[47] Bank notes were negotiable and apparently passed free from equities sixty years before the doctrine of transferability free from equities was judicially established in 1758.[48] In that decision, it is evident that bank notes were intended as a substitute for paper money, since they were given all the attributes of paper money, i.e., its currency and transferability free from equities.[49] By the close of the eighteenth century, the English courts had established the basic principles of the law of negotiable instruments. This body of law was known as the law merchant and it was but a short step to its codification and acceptance in 1882 in England in the Bills of Exchange Act.[50] In the United States this English act served as the basis for the acts adopted by the several states around the turn of the century.[51] Louisiana adopted the NIL in 1904.[52]

Under the NIL the attributes of negotiability appear to be fairly well settled. To be negotiable, an instrument must (1) be in writing and signed by the maker or drawer; (2) contain an unconditional promise or order to pay a sum certain in

47. BRITTON, BILLS AND NOTES 10, 14 (1943).

48. Miller v. Race, 1 Burr. 452 (1758).

49. In the *Miller* case, when it was contended that bank notes were mere chattels, the court said: "But the whole fallacy of the argument turns upon the comparing bank notes to what they do not resemble, and what they ought not to be compared to, viz. to goods or to securities, or documents for debts. Now they are not goods, not securities, nor documents for debts, nor are so esteemed: but are treated as money, as cash, in the ordinary course and transaction of business, by the general consent of mankind; which gives them the credit and currency of money, to all intents and purposes. They are as much money, as guineas themselves are; or any other current coin, that is used in common payments as money or cash." *Id.* at 457.

50. See BRITTON, BILLS AND NOTES 14-22 (1943); 7 AM. JUR. *Bills & Notes* § 22 (1937).

51. See note 49 *supra*.

52. La. Acts 1904, No. 64.

money; (3) be payable on demand; and (4) be payable to bearer or to order.[53] It would seem that paper money, i.e., silver certificates of the United States Treasury and Federal Reserve bank notes, meets all the requisites of negotiability. Each such instrument contains a promise to pay to the bearer thereof, on demand, a sum certain in silver dollars. The issuance of paper money by the Federal Government is not an attempt to coin money out of valueless material, but it is rather a pledge of the national credit and constitutes a promise by the government to pay in silver dollars the amount represented by the certificate.[54] A California appellate court, in resolving the ownership of stolen fifty dollar bills, applied the provisions of the NIL and stated that United States treasury notes are negotiable instruments of the highest character.[55] As to the requirement that it must be in writing and signed by the maker or drawer, Britton, in his *Handbook of the Law of Bills and Notes*,[56] states that the "signature may be in one's handwriting, or printed, engraved, lithographed or photographed so long as they are adopted as the signatures of the signers."[57]

It should be noted that in considering whether paper money is a negotiable instrument within the purview of the NIL at common law, little aid is derived from the jurisprudence because the common law is not faced with the necessity of making such a determination, since the owner is denied recovery under either the common law or the NIL. However, it would seem to this writer that at common law, paper money is considered a negotiable instrument within the purview of the NIL in light of the following: (1) at common law the creditor who received money in payment is always protected against prior equities;[58]

53. UNIFORM NEGOTIABLE INSTRUMENTS LAW, § 1.

54. United States v. Ballard, 14 Wall. 457 (U.S. 1872); 36 AM. JUR. *Money* § 17 (1941).

55. Stiller v. Rogers, 159 P.2d 457 (Cal. App. 1945). *Accord*, Frazer v. D'Invilliers, 2 Pa. 200, 44 Am. Dec. 190 (1846); 10 C.J.S. *Bills & Notes* § 23 (1955). The only indication to the contrary which was discovered was the case of Stone & Webster Engineering Corp. v. Hamilton National Bank, 199 F.2d 127 (6th Cir. 1952). In that case, a district court had held that paper money is not a negotiable instrument within the purview of the NIL. However, the appeal court held that since no "value" had been given as contemplated by the NIL, it was immaterial whether money be deemed to come within the purview of the NIL. A vigorous dissent urged that paper money should be considered as a negotiable instrument within the purview of the NIL.

56. BRITTON, BILLS AND NOTES 33 (1943).

57. See UNIFORM NEGOTIABLE INSTRUMENTS LAW § 191; BRANNAN, NEGOTIABLE INSTRUMENTS LAW 599, 1341 (Beutel's 7th ed. 1948).

58. See note 18 *supra*.

(2) the law merchant, and later its codification in the form of the NIL, was designed to impart to commercial paper the same freedom from prior equities as existed for paper money in order that commercial paper might *substitute* for paper money;[59] and (3) paper money seemingly meets all the prerequisites of a negotiable instrument as set forth in the NIL.[60]

PAPER MONEY AS NEGOTIABLE INSTRUMENT IN LOUISIANA

Although in the writer's opinion it seems that paper money is counted as coming within the purview of the NIL at common law, the fact that Louisiana has adopted the NIL does not necessarily mean that paper money is to be counted as a negotiable instrument in this state. By virtue of Article 2139, money in Louisiana was actually made less negotiable than paper money in the common law since the creditor, under an application of Article 2139, is not protected from prior equities as under the common law. Furthermore, in the recent court of appeal case of *Crawford v. Alatex Construction Service, Inc.*,[61] the court held that paper money is not to be considered a negotiable instrument in Louisiana, and that therefore the provisions of Article 2139 operate to allow the original owner to recover stolen currency from a creditor of the thief to whom it had been paid. As pointed out in the introduction to this Comment, the court's reasoning in support of the statement that paper money does not come within the purview of the NIL in Louisiana is not entirely clear. However, there is a strong inclination that the basis for the statement was the fact that paper money is not signed by the maker.[62] This reasoning would not seem to be sound, in the light of the fact that in R.S. 7:191,[63] Louisiana has adopted the provision of the NIL which states that the

59. Miller v. Race, 1 Burr. 452 (1758); BRITTON, BILLS AND NOTES 339-43 (1943); 8 AM. JUR. *Bills & Notes* § 619 (1937).

60. UNIFORM NEGOTIABLE INSTRUMENTS LAW § 1; Stiller v. Rogers, 159 P.2d 457 (Cal. App. 1945).

61. 120 So.2d 845 (La. App. 1960).

62. *Id.* at 852: "We do not believe currency contains all the essence of a negotiable instrument under our law. We think United States currency is the object for which negotiable instruments issue. The very first requirement of our negotiable instrument law is that the instrument must be signed by the maker. The signatures on paper money are made by facsimile stamp, put there apparently by machinery." *But see id.* at 853 (on rehearing): "We are firmly convinced that United States currency and silver certificates are not such instruments as to come within the purview of the Negotiable Instruments Law, possibly not for the reason stated in our original opinion but for the reason that such are not commercial paper which this law was designed to cover."

63. LA. R.S. 7:191 (1950).

terms "written" includes "printed" and "writing" includes "print,"[64] and in light of the seeming intention of the common law to include paper money within the purview of the NIL.

However, even if it be conceded that the common law would not count paper money as falling within the purview of the NIL, the chief objection to the *Crawford* case is that it creates the anomalous result in Louisiana of affording greater security to commercial paper, which was originated to substitute for paper money, than to money itself.

One theory which could be used to avoid such a result would be to consider paper money as being a negotiable instrument within the purview of the NIL at common law, and since Louisiana has enacted the NIL, probably Louisiana attempted to adopt the same negotiability to paper money as is true at common law. The adoption of this theory would mean that the enactment of the NIL repeals Article 2139, since that article reaches a result contrary to that proposed in the NIL. Even if it be conceded that the legislature in adopting the NIL did not intend that paper money should come within its purview, it is doubtful that the intention was to create the result of affording greater protection to commercial paper than to paper money. Therefore, even if it be said that Article 2139 was not repealed out of an intention on the part of the legislature to include paper money within the purview of the NIL, nevertheless, an implied repeal of this article would have been effected.[65]

If a determination of the ownership of stolen paper money is to be made under the NIL, the outcome would seem to be fairly clear. Under the NIL, the term "holder in due course" is used as an equivalent for the expression "bona fide holder for value without notice." The holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves.[66] As to the question of value, the NIL, in Section 25, provides that

64. Fadaol v. Rideau, 13 La. App. 551, 128 So. 193 (1930).

65. In light of the anomalous result produced by the decision in Crawford v. Alatex Construction Service, Inc., 120 So.2d 845 (La. App. 1960), it would seem that it is unnecessary to consider the question of direct repeal of Article 2139. However, it is interesting to note that Louisiana did not adopt the clause which repeals all prior legislation in conflict therewith as was adopted by the Committee on Uniform Laws. See La. Acts 1904, No. 64, which omitted Section 197 of the Uniform Code.

66. LA. R.S. 7:52-57 (1950).

"value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value."[67]

CONCLUSION

Although the court's interpretation of Articles 2138 and 2139 in the *Crawford* case would seem equitable standing alone, an anomaly is thereby created in that paper money is made less negotiable than commercial paper which was designed to *substitute* for paper money.[68] It is submitted that the court's failure to consider the intent and purpose of the passage of the NIL, in which the legislature evidenced the intent that negotiable intruments should pass free from prior equities, was unfortunate in light of the ever-increasing need of commerce for the extension of credit and the corresponding demand of creditors for maximum security.[69] It would seem that any purpose once served by Article 2139 has been abandoned through the adoption of the NIL. Furthermore, the solution adopted in the *Crawford* case of allowing the owner to recover stolen money paid to a creditor differs from the result under both the French and common law.

Gerald L. Walter, Jr.

67. *Id.* 7:25. In Exchange National Bank v. Longino, 168 La. 824, 123 So. 587 (1929), there was a note given in lieu of a past due note of an insolvent corporation. The note held to be supported by full consideration under Section 25 of the NIL.

68. Although the applicability of Louisiana Civil Code art. 2139 to other forms of currency is not within the scope of this Comment, it would seem that the reasoning is similar. It is not contended that other forms of currency such as coin is to be counted as a negotiable instrument so as to come within the purview of the NIL but rather that the adoption of the NIL impliedly repeals Article 2139 as applied to all forms of currency.

69. For a brief criticism of the *Crawford* case, published after completion of this Comment, see 2 BCI & CL Rev. 159 (1960).